

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
) Criminal No. 2007-61
 v.)
)
 [REDACTED], COURTNEY MATTHIAS,)
 [REDACTED], MONICA BROWNE, JUDY)
 STOWE, and VISHMA SHIVANA PERSAD,)
)
 Defendants.)
 _____)

ATTORNEYS:

Jason T. Cohen, AUSA
St. Thomas, U.S.V.I.
For the plaintiff.

Clive C. Rivers, Esq.
St. Thomas, U.S.V.I.
For defendant Courtney Matthias.

Leonard B. Francis, Esq.
St. Thomas, U.S.V.I.
For defendant Monica Browne.

George Hodge, Esq.
St. Thomas, U.S.V.I.
For defendant Judy Stowe.

Jesse A. Gessin, AFPD
St. Thomas, U.S.V.I.
For defendant Vishma Shivana Persad.

ORDER

GÓMEZ, C.J.

On November 8, 2007, the government indicted the six
defendants in this matter on eleven counts of bringing or

attempting to bring an alien into the United States. That indictment was sealed as to four of the defendants. On December 6, 2007, the government filed a ten-count superseding indictment against the same defendants. The superseding indictment was sealed as to two of the defendants. The superseding indictment did not contain one of the counts contained in the initial indictment. In all other respects it was identical to the initial indictment.

Defendant Judy Stowe and Vishma Shivana Persad ("Persad") made their first appearance in this matter when they were arraigned on November 14, 2007. Defendants Courtney Matthias and Monica Browne made their first appearance when they were arraigned on December 19, 2007. Arrest warrants have issued for the remaining two defendants, but they have not yet appeared or been taken into custody.

Persad now seeks to dismiss this matter for alleged violations of the Speedy Trial Act. Persad alleges that more than seventy days have elapsed since the filing and making public of the indictment.

The Speedy Trial Act requires that trial commence within seventy days of a defendant's initial appearance or of the filing and making public of the indictment, if later. See 18 U.S.C. § 3161(c). Delay resulting from any pretrial motion, from the date

of the filing of the motion through the date of the prompt disposition of the motion, is excluded from the computation of Speedy Trial Act time. See 18 U.S.C. § 3161(h)(1)(F). Any pretrial motion, including a motion for extension of time, is a pretrial motion within the meaning of Section 3161(h)(1)(F) and creates excludable time, even if it does not in fact delay trial. See *United States v. Novak*, 715 F.2d 810, 813 (3d Cir. 1983), *cert. denied*, 465 U.S. 1030 (1984).

The Speedy Trial act also allows district courts to grant continuances on finding that "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." See 18 U.S.C. § 3161(h)(8)(A); see also *United States v. Adedoyin*, 369 F.3d 337, 341 (3d Cir. 2004). Under the statute, courts must justify their continuances by an oral or written statement setting forth on the record their reasons for granting them. *Id.*; see also *United States v. Lattany*, 982 F.2d 866, 877 (3d Cir. 1992), *cert. denied*, 510 U.S. 829 (1993). The discretion of courts "is not unfettered, however." *United States v. Watts*, Crim. No. 2004-153, 2005 U.S. Dist. LEXIS 22505, at *7 (D.V.I. Sept. 30, 2005). The statute lists factors that courts must consider in granting such a continuance. See, e.g., *United States v. Rivera*, 863 F.2d 293, 295 (3d Cir. 1988) (holding that under the totality of the

circumstances, the Speedy Trial Act's requirements were met when the district court articulated on the record one of the factors listed in the statute as the reason to exclude time, such as a continuance to allow new counsel to adequately prepare for trial).

The Speedy Trial clock in this matter was triggered when Persad's co-defendants, Courtney Matthias and Monica Browne, were arrested and arraigned on December 19, 2007. 18 U.S.C. § 3161(h)(7); *see also Henderson v. United States*, 476 U.S. 321, 323 n.2 (3d Cir. 1986) ("All defendants who are joined for trial generally fall within the speedy trial computation of the latest codefendant.").

On December 28, 2007, the government filed an *ex parte* motion to provide inventory notice of wire interceptions and to disclose the recorded statements of the defendants. While that motion was pending, the government filed a motion to continue the trial in this matter. The Court granted the motion to provide notice of wire interceptions and to disclose statements on January 23, 2008. On February 1, 2008, the Court found that the ends of justice required the Court to grant the government's motion to continue. Thus, the thirty-six days from December 28, 2007, through February 1, 2008, are excludable under the Speedy Trial Act. *See* 18 U.S.C. § 3161(h)(1)(F); *see also Lattany*, 982

F.2d at 872.

Finally, Persad filed the motion to dismiss now before the Court on February 11, 2008. The time from the filing of Persad's motion to dismiss up to and including the date of this Order are excluded from Persad's Speedy Trial count. See 18 U.S.C. § 3161(h)(1)(F); see also *United States v. Willaman*, 437 F.3d 354, 357 (3d Cir. 2006) (citing *United States v. Arbelaez*, 7 F.3d 344, 347 (3d Cir. 1993)).

In sum, only seventeen non-excludable days have elapsed in this matter. That count falls well within the limitations imposed by the Speedy Trial Act.¹

¹ Persad raises several arguments in support of her motion.

First, Persad asserts that she did not have notice of the government's *ex parte* motion to disclose wiretap intercepts and recordings. Persad claims that this lack of notice violated her common-law and First Amendment rights. Persad provides no pertinent support for that assertion. In any case, that assertion is unavailing, since the question whether an *ex parte* motion violates a defendant's First Amendment rights is not relevant in a Speedy Trial analysis.

Second, Persad maintains that the Court, in its February 1, 2008, ruling, did not provide a reason why it did not rule on the government's December 28, 2007, motion to disclose the wire intercepts and recordings until January 23, 2008. Persad contends that this lack of explanation renders the Court's ends-of-justice finding deficient. That contention is misguided. First, even if the Court had not made an ends-of-justice finding to exclude the twenty-seven days between December 28, 2007, and January 23, 2008, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), those days would have been excludable pursuant to 18 U.S.C. § 3161(h)(1)(F). Second, the Speedy Trial Act speaks only of "prompt disposition." Given the Third Circuit's explicit refusal

For the reasons stated above, it is hereby

ORDERED that the motion to dismiss is **DENIED**.

S\ _____
CURTIS V. GÓMEZ
Chief Judge

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Clive C. Rivers, Esq.
Leonard B. Francis, Esq.
George Hodge, Esq.
Jesse A. Gessin, AFD

to impose fixed time limits on subsection (h)(1)(F), see *United States v. Novak*, 715 F.2d 810, 820 (3d Cir. 1983), the Court cannot say that its ruling on the government's motion was not prompt, within the meaning of the statute. Indeed, Persad does not point the Court to any authority to the contrary. Finally, even if the Court did not exclude any of those twenty-seven days, Persad's Speedy Trial count would nevertheless stand at forty-four days. Significantly, that count would still conform with the requirements of the Speedy Trial Act.